

KAHS610019192023



IN THE COURT OF III ADDL CIVIL JUDGE AND JMFC AT
CHANNARAYAPATNA, HASSAN
Presided Over by SUNEETA

PRESENT:- Smt. SUNEETA ., B.A., LL.B.,
III Addl. Civil Judge & JMFC,
Channarayapatna.

Dated this the 5th day of APRIL 2024

O.S./933/2023

Plaintiff/s : Nanjappa S/o Late Nanjappa,
Aged about 64 years,
Jambur village,
Nuggehalli Hobli,
Channarayapatna Town,
Hassan District.
(By Sri .T.S.P Adv.,)

V/s

Defendant/s : 1. Ramaiah S/o Eraiah
Aged about 70 years,

2. Nanjaiah S/o Eraiah
Aged about 67 years,

3. Jayamma W/o Late Krishnappa D/o Eraiah,

Aged about 55 years,

4. Vinodha D/o late Krishnappa,
Aged about 22 years,
All are R/at: Jambur village,
Nuggehalli Hobli,
Channaraypatna Taluk,
Hassan District.

(Defendants by Sri. K.B.K.advocate.,)

I.A.No.1

Applicant:

Nanjappa

(Plaintiff)

V/S

Opponent:

Ramaiah and others

(defendants)

ORDER ON I.A No. 1 PLAINTIFF FILED UNDER ORDER

XXXIX RULE 1 AND 2 OF CPC

IA No.1 is filed by the Learned Counsel for the Plaintiff Under Order 39 Rule 1 and 2 of C.P.C for seeking the equitable relief of Temporary Injunction infavour of the Plaintiff and thereby restraining the Defendants, their agents, servants or anybody acting on their

behalf from trespassing and interfering with Plaintiff's peaceful possession and enjoyment over the suit schedule property till the disposal of the suit.

2. The Plaintiff sworn to an affidavit in support of the application wherein he has stated that the averments of the plaint may be read as part and parcel of the plaint. It is stated in the plaint that suit schedule property originally belonged to Kodigowda S/o Channaiah. Thereafter, the Plaintiff purchased the suit schedule property from Kodigowda S/o Channaiah under the registered sale deed dated 13-02-2019. It is stated that from the date of purchasing the suit schedule property, the Plaintiff is in actual possession and enjoyment over the suit schedule property and also paying the tax to the concerned department from time to time. The plaintiff has made a Haddu Basthu survey of the suit property and the plaintiff has taken a loan by mortgaging the suit schedule property in Primary agricultural Co-Operative Bank, Nuggehalli. It is further submitted that the defendants do not have manner of rights, title

interest over the suit property. Further stated that the defendants owns a property measuring 27 guntas in Survey No. 54/6 of J. Madihalli Village towards the western side of the suit property. The said 27 guntas of land is divided into 9 guntas each as per M.R. H No. 7/17-18 and the defendants are enjoying it separately. This being the fact, the defendants without having any manner of rights, interest, possession over the suit property, the defendants trespassed the suit schedule property and trying to encroach the western side of the suit property and interfered the peaceful possession and enjoyment of the suit property by the plaintiff. When the plaintiff questioned the illegal act of the defendants, the defendants continue to commit illegal acts by misusing the helplessness of the plaintiff without giving any value to the words of the plaintiff. The plaintiff advised the defendants through elders of the village, but it went in vain. The plaintiff has approached the Nuggehalli Police and lodged the complaint, which could not give fruitful results. The plaintiff has no other alternative efficiency remedy then to file this suit. Hence the defendants are liable to be

restrained by means of permanent Injunction and restraining them from interfering in any manner with the plaintiff's peaceful possession and enjoyment of the suit property. It is stated that the Plaintiff has got prima-facie case, balance of convenience leans in favour of the Plaintiff and if IA No.1 is not allowed, the Plaintiff will be put to irreparable loss and hardship. With these averments the Plaintiff has sought for allowing the IA No.1.

3. The Defendants have appeared through their counsel and filed memo for adopting their written statement as objections to IA No.1. The Defendants in their written statement have contended that suit schedule property is the ancestral property of defendants and suit schedule property fallen to the share of defendants through partition. Further contended that in Sy.No.54/3 of J.Madihalli village, there is 36 guntas of land, in the said property the defendants have continued in possession since the time of their ancestors. Further contended that they are growing millet, buckwheat, corn and other crops in the property. This being the

fact, katha of the property bearing Survey No.54/3 measuring 9 guntas of land of J. Madihalli Village changed in the name of plaintiff due to the mistake of the revenue officials. By misusing the said fact, the plaintiff is harassing the defendants in respect of the suit schedule property and also trying to alienate the said property. This being the fact, even though the plaintiff has no right, authority, interest or possession over the suit schedule property, the plaintiff in connivance with the revenue authorities is obstructing the possession of the schedule property of the defendants with the malicious intention of deceiving the defendants and illegally possessing the valuable suit schedule property. Further contended that the plaintiff are trying to damaging the crops grown in the suit schedule property. Further contended that a week before the filling of this suit, the plaintiff has trespassed on the suit property and tried to plow the suit property, the defendants immediately went to the spot and evicted the plaintiff from the suit schedule property. It is contended that the defendants have filed suit against the plaintiff before this Court as O.S No.

14/2023 seeking declaration and permanent injunction and the said suit is pending for adjudication. The plaintiff has concealed all these facts and filed this false suit. Further stated that the plaintiff has filed an appeal before the Sub –Divisional Court, Hassan as Appeal No.722-2022-23, and the said appeal is still pending. The plaintiff has brought this suit by creating documents and deceiving the defendants that both 22 guntas of land in Survey No.54/4 and 9 guntas of land in Survey Number 54/3 of J.Madihalli village belong to him. It is further contended that when the Plaintiff is not in actual peaceful possession and enjoyment over the suit schedule property, then he is not entitle for any reliefs. With these contentions the Defendants have sought before this Court is pending for adjudication. for rejection of IA No.1.

4. Heard the learned counsels appearing for the parties and perused the materials on record.

5. The following points arose for the consideration of this Court:

POINTS

1. Whether plaintiff has made out prima-facie case for grant of Temporary Injunction as sought for ?
2. Whether balance of convenience lies in his favour?
3. Whether the plaintiff will be put to irreparable loss and hardship, if I.A.is not allowed?
4. What order?

6. The findings of this Court on the above said Points are as under:

Point No.1: In the Affirmative

Point No.2: In the Affirmative

Point No.3: In the Affirmative

Point No.4: As per the final Order
for the following

R E A S O N S

7. **POINT No.1:** The Learned Counsel for the Plaintiff argued before the Court that the Plaintiff has purchased the suit schedule property under the registered sale deed dated 13-02-2019 from one Kodigowda S/o Channaiah and he is in actual possession and

enjoyment over the suit schedule property, but the Defendants are interfering with Plaintiff's peaceful possession and enjoyment over the suit schedule property, hence the equitable relief of Temporary Injunction has to be granted infavour of the Plaintiff till the disposal of the suit. Per contra the Learned Counsel for the Defendants vehemently argued before the Court that suit schedule property is the ancestral property of defendants and suit schedule property fallen to the share of defendants through partition. Further argued that in Sy.No.54/3 of J. Madihalli village, there is 36 guntas of land, in the said property the defendants have continued in possession since the time of their ancestors. Further argued that they are growing millet, buckwheat, corn and other crops in the property. This being the fact, katha of the property bearing Survey No.54/3 measuring 9 guntas of land of J. Madihalli Village changed in the name of plaintiff due to the mistake of the revenue officials. By misusing the said fact, the plaintiff is harassing the defendants in respect of the suit schedule property and also trying to alienate the said property. This being the fact, even though

the plaintiff has no right, authority, interest or possession over the suit schedule property, the plaintiff in connivance with the revenue authorities is obstructing the possession of the schedule property of the defendants with the malicious intention of deceiving the defendants and illegally possessing the valuable suit schedule property. Further argued that the plaintiff has concealed all these facts and filed this false suit. Further argued that the defendants have filed an appeal before the Sub –Divisional Court, Hassan and the said appeal is still pending. The plaintiff has brought this suit by creating documents. Hence the Plaintiff is not entitle for any equitable relief from the hands of this Court.

8. In light of the arguments canvassed by the Learned Counsels for the parties, this Court has carefully perused the list of documents produced by the parties to the suit. The list of the documents produced by the Plaintiff consist of the record of rights of the suit schedule property for the year 2014-2015, 2018-19 standing in the name of Kodigowda S/o Channaiah . Copy of the Registered sale deed dated

18-02-2019, mutation extract, record of rights of the suit schedule property for the year 2023-2024 standing in the name of plaintiff, Copy of Patta Book, Copy of Tax paid receipts, Copy of the Haddu Basthu Survey and Sketch, Acknowledgment issued by the Nuggehalli Police, Record of rights of the property bearing Survey No.54/6 of J.Madihalli Village standing in the name of defendant No.1 and 2. The Defendants have not produced any documents in support of their defence.

9. At this stage, without going in to the merits of the case and holding mini trial, this court has considered the aspect of Prima facie case. At this stage, this court makes it very clear that this court is looking towards prima facie case and not prima facie title. It is well-settled principles of law that at the time of disposing the Temporary Injunction application, the court cannot go into the prima facie title and only to consider whether the Plaintiff has made out a prima facie case for granting interim relief.

10. The primary purpose for granting interim relief is the preservation of property in dispute till legal rights and conflicting claims of the parties before the court are adjudicated. In other words, the object of making an order regarding interim relief is to evolve a workable formula to the extent called for by the demands of the situation, keeping in mind the pros and cons of the matter and striking a delicate balance between two conflicting interests i.e., injury and prejudice, likely to be caused to the Plaintiff if the relief is refused; and injury and prejudice likely to be caused to the Defendants if the relief is granted. The underlying object of granting temporary injunction is to maintain and preserve status quo at the time of institution of the proceedings and to prevent any change in it until the final determination of the suit. It is in the nature of protective relief granted in favour of a party to prevent future possible injury.

11. The power to grant a temporary injunction is at the discretion of the court. This discretion, however, should be exercised

reasonably, judiciously and on sound legal principles. Injunction should not be lightly granted as it adversely affects the other side.

12. The first rule is that the applicant must make out a prima facie case in support of the right claimed by him. The court must be satisfied that there is a bonafide dispute raised by the applicant, that there is a strong case for trial which needs investigation and a decision on merits and on the facts before the court there is a probability of the applicant being entitled to the relief claimed by him. The existence of a prima facie right and infraction of such right is a condition precedent for grant of Temporary Injunction.

13. In order to ascertain the prima facie case this Court has carefully perused the documents produced by the Plaintiff. After perusal of the sale deed dated 18-02-2019, it appears to this Court that one Kodigowda S/o Channayya has sold the suit schedule property infavour of the Plaintiff. The sale deed dated 18-02-2019 is the registered document; hence the same has to be considered in

order to ascertain the prima facie case. The record of rights of suit schedule property appears to this Court that suit schedule property standing in the name of the Plaintiff. The mutation extract of the suit schedule property is also standing in the name of the Plaintiff. The tax paid receipt shows that the Plaintiff has paid tax in respect of the suit schedule property. The Acknowledgement issued by the Police reveals before the Court that the Plaintiff has approached the Jurisdictional Police. After considering the said documents, it appears to this Court that the Plaintiff has made out prima facie case for grant of equitable relief of Temporary Injunction. At this stage the Defendants in support of their defence have not produced any documents. **With these observations this Court has answered Point No.1 in the Affirmative.**

14. **POINT No.2 AND POINT No.3**: Both these points are interconnected; hence in order to avoid the repetition of discussion, both these points are taken together for common discussion

The second condition for granting interim injunction is that the balance of convenience must be in favour of the applicant. In other words, the court must be satisfied that the comparative mischief, hardship or inconvenience which is likely to be caused to the applicant by refusing the injunction will be greater than that which is likely to be caused to the opposite party by granting it.

15. The existence of the prima facie case alone does not entitle the applicant for a temporary injunction. The applicant must further satisfy the court about the third condition by showing that he will suffer irreparable injury if the injunction as prayed is not granted and that there is no other remedy open to him by which he can protect himself from the consequences of apprehended injury.

16. It is argued by the Learned Counsel for the Plaintiff that by virtue of sale deed dated 18-02-2019, he is in actual possession and enjoyment over the suit schedule property but the Defendants are interfering with his peaceful possession and enjoyment over the same. It is further argued before the Court that if the Temporary

Injunction is not granted infavour of the Plaintiff, more mischief and hardship will cause to the Plaintiff than the mischief and hardship will cause to the Defendants if IA No.1 is allowed. After considering the materials on record, it appears to this Court that the Plaintiff has made out prima facie, hence he is entitle for equitable relief of Temporary Injunction. After considering the materials on record, it appears to this Court that if IA No.1 is rejected, more mischief and hardship will cause to the Plaintiff than the mischief and hardship will cause to the Defendants if IA No.1 is allowed and equitable relief of Temporary Injunction is granted infavour of the Plaintiff. By considering all these aspects this Court is of the opinion that the balance of convenience leans infavour of the Plaintiff and if the Temporary Injunction has not granted infavour of the Plaintiff, then the Plaintiff will be put to irreparable loss and hardship and the same can not be compensated in terms of money. **With these observations this Court has answered Point No.2 and 3 in the Affirmative.**

17. **POINT No.4** : For the aforesaid discussion on Point No.1 to 3, this Court proceeds to pass the following:

O R D E R

IA No.1 filed by the Learned Counsel for the Plaintiff is hereby allowed.

The Defendants, their agents, servants or anybody acting on their behalf are hereby temporarily restrained by way of granting Temporary Injunction infavour of the Plaintiff from trespassing and interfering with the Plaintiff's peaceful possession and enjoyment over the suit schedule property till disposal of the suit.

No order as to cost.

(Dictated to the stenographer on-line to the computer and typed by her, corrected, signed and then pronounced by me in open court on 5th day of April 2024)

(Suneeta)
III Addl.Civil Judge and J.M.F.C.
Channarayapatna

